



MARTIN J. McCUE, (# 018849)
PATRICK F. KEERY, (# 030971)

KEERY McCUE, PLLC
6803 EAST MAIN STREET, SUITE 1116
SCOTTSDALE, AZ 85251
TEL. (480) 478-0709
FAX (480) 478-0787
MJM@KEERYMCCUE.COM
PFK@KEERYMCCUE.COM

PROPOSED ATTORNEYS FOR DEBTOR

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re

HUFFERMEN, INC.

Debtor.

Case No. 2:18-bk-14369-MCW

Chapter 11

**EMERGENCY MOTION FOR AN ORDER:
(A) AUTHORIZING PAYMENT OF UNPAID
PRE-PETITION WAGES, SALARIES,
REIMBURSEMENT OF EXPENSES AND
EMPLOYEE BENEFITS; AND (B)
DIRECTING ALL BANKS TO HONOR PRE-
PETITION CHECKS FOR PAYMENT OF
PRE-PETITION EMPLOYEE OBLIGATIONS**

Huffermen, Inc. (“**Debtor**” or “**Huffermen**”), as debtor and debtor-in-possession in the above-entitled Chapter 11 proceeding, hereby moves this Court for an Order; (a) authorizing the Debtor to pay unpaid pre-petition wages, salaries, reimbursement of expenses and employee benefits; and (b) directing all banks to honor pre-petition checks for payment of such pre-petition employee obligations (the “**Motion**”).

A motion for an expedited hearing on this matter has been filed simultaneously herewith as payments to employees are due to be disbursed. The payment of employees requested herein is essential to Debtor’s business operations, as it is necessary to maintain employee morale and

1 because a failure to make payroll on time would likely result in the loss of employees, as well as
2 a severe hardship to those employees. This Motion is supported by the entire record before the
3 Court, the “Declaration of Ross Dodson in Support of Chapter 11 Petition and First Day
4 Accelerated Motions” (the “**Dodson Declaration**”), and the attached Memorandum of Points and
5 Authorities, which is incorporated herein by this reference.

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7 **DATED** this 26th day of November, 2018.

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9 **KEERY MCCUE, PLLC**

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11 By: /s/ Patrick F. Keery (#030971)
12 Patrick F. Keery, Esq.
13 *Proposed Attorneys for Debtor*

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MEMORANDUM OF POINTS AND AUTHORITIES

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I. JURISDICTION AND VENUE

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1. Huffermen, Inc., an Arizona Corporation (“**Huffermen**”), filed a voluntary petition under
6 Chapter 11 of the Bankruptcy Code on November 26, 2018 (“**Petition Date**”).

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2. Ross Dodson (“**Mr. Dodson**”) is the president, director and majority shareholder of the
8 Debtor.

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3. Mr. Dodson is operating Debtor and managing Debtor’s assets as debtor-in-possession in
10 accordance with 11 U.S.C. §§ 1107 and 1108. This Court has jurisdiction over this Chapter
11 proceeding under 28 U.S.C. §§ 157 and 1334. These matters constitute core
12 proceedings under 28 U.S.C. § 157(b)(2).

13

4. Debtor is an Arizona corporation with its principal place of business located in Phoenix,
14 Maricopa County, Arizona. Accordingly, venue of the Debtor’s Chapter 11 proceeding is
15 proper in this District under 28 U.S.C. §§ 1408 and 1409.

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5. The statutory predicates for the relief requested in this Motion are Bankruptcy Code §§
17 105(a), 363(a)(4) and 507(a)(5).

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II. FACTUAL BACKGROUND

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6. Huffermen is owned and operated by Mr. Dodson and Eric Miller (“**Mr. Miller**”). Mr.
21 Dodson owns 75% of the outstanding shares in Debtor and Mr. Miller owns the remaining
22 shares.

23

7. Huffermen is in the business of plastic bottle manufacturing and advertising specialties
24 printing and has been in operation since 2000.

25

8. Huffermen was formed on September 15, 2000 for the purpose of manufacturing and
26 selling plastic products. Huffermen has thirty-seven (37) full-time employees (including
27 Mr. Dodson and Mr. Miller) and no part-time employees.

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9. Mssrs. Dodson and Miller intend to continue to operate Huffermen and to reorganize under
Chapter 11 of the Bankruptcy Code.

1 10. The employees perform a variety of critical functions, including the operation of
2 Huffermen's business, as well as performing tasks related to client relations, customer
3 service, sales, shipping, administrative, accounting, supervisory, and other tasks. The
4 employees' skills, labor and their knowledge and understanding of industry and more
5 specifically, Huffermen's operations are essential to the effective restructuring of the
6 Debtor's business. Without the continued services of the employees, an effective
7 restructuring of the Debtor will not be possible.

8 11. If pre-petition compensation is not received by the employees in the ordinary course, they
9 will suffer extreme personal hardship and in many cases will be unable to pay their basic
10 living expenses. Such a result obviously would destroy employee morale and result in
11 unmanageable employee turnover, causing immediate and pervasive damage to the
12 Debtor's ongoing business operations. Any significant deterioration in morale at this time
13 will substantially and adversely affect the Debtor and its ability to reorganize, and result in
14 immediate and irreparable harm to the Debtor and its estate.

15 12. The relief requested in this Motion will reduce significantly the administrative burden that
16 might otherwise be imposed in this Chapter 11 case. The compensation and reimbursement
17 amounts that the Debtor seeks to pay to the employees constitute priority claims under
18 Bankruptcy Code §507(a)(4) to the extent of \$12,850.00 per employee.

19 13. Because all of the employees are engaged in the Debtor's general operations and are paid
20 hourly, the Debtor anticipates that all accrued pre-petition obligations owing to individual
21 employees will be substantially less than the statutory cap of \$12,850.00 per employee for
22 priority treatment provided by §507(a)(4).

23 14. In addition to the direct compensation, the Debtor also reimburses employees for expenses
24 incurred and pays certain third parties for services rendered as "employee benefits." These
25 sums may reflect both pre- and post-petition benefits, and, as with the payment of employee
26 earnings, the funding of these benefit obligations is essential to the retention of employees
27 and to the Debtor's operations.

1 15. Debtor's request to pay employees does not include payment of wages to insiders, Mr.
2 Miller or Mr. Dodson, or any terminated or departing employees of Debtor.
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4 **III. RELIEF REQUESTED**

5 By this Motion, the Debtor requests that this Court enter an Order pursuant to §§105(a)
6 and 507(a)(4) of the Bankruptcy Code, authorizing the Debtor to pay or otherwise honor various
7 employee-related pre-petition obligations of the Debtor to or for the benefit of current and/or
8 former employees (collectively, the "**Employees**"), as would be the normal procedure for the
9 Debtor. All of these payments are ordinary payments of wages and do not contain any
10 extraordinary or atypical payments to employees.

11 For the reasons set forth herein, the Debtor respectfully submits that it is in the best interests
12 of the Estate for this Court to authorize the Debtor to make such payments and honor obligations
13 owed to, or for the benefit of the Employees. These obligations (the "**Pre-Petition Employee
14 Obligations**") include, without limitation: (a) unpaid pre-petition wages, fees, salaries, bonuses,
15 commissions, holiday and vacation pay and sick leave pay earned prior to the petition date; (b)
16 workers' compensation claims arising before the petition date; (c) reimbursable business expenses
17 incurred before the petition date; and (d) other employee benefit claims arising before the petition
18 date, including without limitation, claims for payroll and withholding taxes, payments pursuant to
19 garnishment orders, and miscellaneous other benefits. While Debtor does not know the exact
20 amount of the Pre-Petition Employee Obligations,¹ Debtor believes the amounts reflected in
21 Exhibit A (attached hereto) are indicative of such amounts.

22 Debtor also seeks authority to pay any and all local, state, and federal withholding and
23 payroll related taxes relating to the pre-petition periods including, but not limited to, all
24 withholding taxes, Social Security taxes and Medicare taxes. *See City of Farrell v. Sharon Steel
25 Corp.*, 41 F.3d 92 (3rd Cir. 1994) (state law requiring debtor to withhold city income taxes from its

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¹ Debtor's next pay period is from November 21, 2018 through December 1, 2018 and are payable on December 7,
27 2018. Given that the pay period is not yet complete, the pay schedule attached as Exhibit A reflects the payroll to
28 Employees for the pay period immediately prior to the current pay period and Debtor does not expect any significant
deviation in amounts owing to employees.

1 employees' wages create a trust relationship between debtor and the city for payment of withheld
2 taxes).

3 Finally, Debtor seeks an Order directing all banks to honor pre-petition checks for payment
4 of the Pre-Petition Employee Obligations.

5 **IV. LEGAL ARGUMENT**

6 Sections 507(a)(4) and (a)(5) of the Bankruptcy Code give priority up to \$12,850.00 per
7 individual for pre-petition claims for wages, salaries, vacation, and sick leave, and claims for
8 contribution to Employee Benefit plans. The Debtor estimates that most, and likely all of, the pre-
9 petition employment obligations are entitled to priority under §§507(a)(4) and (a)(5) as each
10 employee-claimant is owed less than \$12,850.00. Payments to §§507(a)(4) and (a)(5) creditors in
11 full, as of the plan's effective date are a requirement for any Chapter 11 Plan of Reorganization.
12 11 U.S.C. §1129(a)(9)(B). Accordingly, the Bankruptcy Code requires the Debtor to follow the
13 requirements of §§507(a)(4) and (a)(5) in formulating its Chapter 11 Plan before presenting the
14 plan to its creditors and the Court.

15 Moreover, under the "necessity of payment" rule, first enunciated by the Supreme Court in
16 *Miltenberger v. Logansport, C. & S.W.R. Co.*, 106 U.S. 286 (1882), a bankruptcy court may use
17 its §105 equitable powers to permit a debtor-in-possession to pay pre-petition claims when
18 payment is necessary to effectuate a successful reorganization. *See In re Lehigh & New England*
19 *Ry. Co.*, 657 F.2d 570, 581 (3rd Cir. 1981) (necessity of payment doctrine "teaches no more than,
20 if payment of a claim which arose prior to reorganization is essential to the continued operation of
21 the [business] during the reorganization, payment may be authorized even if it is made out of the
22 corpus").

23 Also, Section 105(a) provides "the court may issue any order, process or judgment that is
24 necessary or appropriate to carry out the provisions of this title." 11 U.S.C. §105(a). Bankruptcy
25 courts have repeatedly relied upon §105(a) as authority for granting motions for approval of pre-
26 petition salary and wages. *See e.g., In re Ionosphere Clubs, Inc.*, 98 B.R. 174 (Bankr. S.D.N.Y.
27 1989) (§105(a) allows for approval of payment for employees' claims for pre-petition wages,

1 salaries, medical benefits and business expense claims).

2 The Bankruptcy Court for the District of Arizona has, in previous cases, utilized its §105
3 powers to authorize the payment of pre-petition employee claims when, as in this case,
4 nonpayment or delay would damage a company's business or ability to reorganize. *See In re*
5 *McCulloch Corp.*, No. 99-0074-TUC-JMM (Bankr. D. Ariz. January 11, 1999); *see also In re*
6 *Unison Healthcare Corp.*, 98-06583-PHX-GBN (D. Ariz. September 5, 1998).

7 Other courts have also permitted debtors-in-possession to pay pre-petition wage, salary,
8 expense and benefit claims if payment of such claims was necessary to effectuate a successful
9 reorganization. *See In re Gulf Air, Inc.*, 112 B.R. 152 (Bankr. W.D.La. 1989) (authorizing debtor-
10 in-possession to pay pre-petition employee wages and benefits, and health, life and workers'
11 compensation insurance premiums); *see also In re Chateaugay Corp.*, 80 B.R. 279 (S.D.N.Y.
12 1987) (affirming order authorizing debtor to pay certain pre-petition wages, salaries, employee
13 reimbursement expenses and benefits, including payment on workers' compensation claims).

14 The relief requested in this Motion is necessary and should be authorized under §105. The
15 Employees are vital to the continued operation of the Debtor's business and to its successful
16 reorganization. Authorization to pay the pre-petition Employee obligations is necessary to
17 maintain the Employees' morale and to prevent many of them from suffering extreme personal
18 hardship or from seeking other employment. Accordingly, the relief sought herein is consistent
19 with §§ 105(a) and 507(a) of the Bankruptcy Code.

20 Moreover, the Debtor's payment of the Pre-Petition Employee Obligations to Employees
21 in the ordinary course of business should neither prejudice general unsecured creditors nor
22 materially affect Debtor's estate, because §§ 507(a)(4) and (a)(5) priority claims would already be
23 entitled to payment in full under a reorganization plan. *See* 11 U.S.C. § 1129(a)(9)(B).

24 Debtor seeks to pay the Pre-Petition Employee Obligations and to continue the post-
25 petition funding of its employee benefits packages. Such action, if authorized, however, should
26 not be deemed to be an assumption or adoption of any agreement or policy providing such
27 coverage.

WHEREFORE, Debtor respectfully requests entry of an order granting the relief requested herein and such other and further relief as is just and proper.

DATED this 26th day of November, 2018.

KEERY MCCUE, PLLC

By: /s/ Patrick F. Keery (# 030971)
Patrick F. Keery, Esq.
Proposed Attorneys for Debtor

COPY of the foregoing served
via email to:

Office of U.S. Trustee
230 North First Ave., Suite 204
Phoenix, AZ 85003-1706
Email: ustpregion14.px.ecf@usdoj.gov

By: /s/ Mollie Thompson